

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-1427

BARBARA KELLY,

Petitioner - Appellant,

versus

GEORGE GINITOL, Director, South Carolina
Department of Mental Health; MR. COOPER,
Director Columbia Care Center; CHARLES CONDON,
Attorney General,

Respondents - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Columbia. Patrick Michael Duffy, District Judge.
(CA-02-2333)

Submitted: June 19, 2003

Decided: June 24, 2003

Before NIEMEYER, KING, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Barbara Kelly, Appellant Pro Se. Donald John Zelenka, Chief Deputy
Attorney General, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Barbara Kelly seeks to appeal the district court's order adopting the report and recommendation of the magistrate judge and dismissing her petition for a writ of habeas corpus filed under 28 U.S.C. § 2241 (2000).^{*} An appeal may not be taken from the final order in a habeas corpus proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). When, as here, a district court dismisses a § 2241 petition solely on procedural grounds, a certificate of appealability will not issue unless the petitioner can demonstrate both "(1) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir.) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)), cert. denied, 534 U.S. 941 (2001).

The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2000). The magistrate judge recommended that relief be denied and advised Kelly that failure to file timely objections to this recommendation could waive appellate review of a district court order based upon the recommendation.

^{*} Although the petition was filed on a form for relief under 28 U.S.C. § 2254 (2000), the district court construed the motion under § 2241. See Braden v. 30th Judicial Cir. Ct., 410 U.S. 484, 489-90 (1973).

Despite this warning, Kelly failed to object to the magistrate judge's recommendation.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned that failure to object will waive appellate review. See Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); see also Thomas v. Arn, 474 U.S. 140 (1985). Kelly has waived appellate review by failing to file objections after receiving proper notice. Because jurists of reason would not find this point debatable, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED